

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal No. 04-126 (MJD)

UNITED STATES OF AMERICA,        )  
  )  
Plaintiff,                         )  
  )      **ORDER**  
v.                                    )  
  )  
NATHAN JOHN MIKULAK,            )  
  )  
Defendant.                        )

Defendant Nathan John Mikulak, through counsel, moved pursuant to 28 U.S.C. § 2255, to vacate and correct his 180-month sentence, which was imposed pursuant to the Armed Career Criminal Act (ACCA). He argues that he no longer possesses the three predicate convictions required for enhanced sentencing under the ACCA because his 1997 Minnesota conviction for third degree arson does not qualify as a violent felony after the Supreme Court's decisions in *Johnson v. United States*, 135 S. Ct. 2551 (2015) and *Welch v. United States*, 136 S. Ct. 1257 (2016). The government agrees that the defendant's third degree arson conviction no longer qualifies as a violent felony and agrees that

Defendant's sentence should be vacated and that he should be resentenced under 18 U.S.C. § 924(a)(2) to a term of imprisonment of ten years.

Based on *Johnson*, the Court finds that Defendant no longer qualifies as an armed career criminal pursuant to 18 U.S.C. § 924(e).

Accordingly, **IT IS ORDERED** that the Defendant is re-sentenced as follows:

1. The Defendant is committed to the custody of the United States Bureau of Prisons for 10 years with credit for time already served;
2. Upon release from imprisonment, the Defendant shall be on supervised release for a term of 3 years, with the same conditions as previously imposed;
3. Upon release from imprisonment, the Defendant shall reside for a period of up to 120 days in a Residential Reentry Center, at the discretion of the probation officer, and shall observe the rules of that facility.

Dated: November 3, 2016

s/ Michael J. Davis

MICHAEL J. DAVIS

United States District Court